

Navigating International Norms in Peace Mediation

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The Promise of Peace Mediation

Navigating norms in peace mediation is possible through understanding what mediation can or cannot achieve. This means determining whether it is indeed the best option for third-party intervention in a given context. Mediation differs from other forms of third-party dispute settlement by emphasizing the negotiating parties' ownership of the outcome. Mediators have limited power. They can facilitate, cajole or encourage the parties, but they have no ownership over the content being negotiated. This forms part of the definitional core of mediation. For example, if a mediator starts forcefully negotiating with parties on agenda items, the process should arguably be called high-powered diplomacy

rather than mediation. Similarly, if a mediator decides on the outcome of a negotiated settlement, the process would be better described as arbitration. The mediator's limited role poses certain risks. The view that what is not 'put on the peace table' may be lost or more difficult to include at a later stage puts high expectations on the mediator. This view risks narrowing the focus on alternative outcomes. It also reduces the mediator to a scapegoat if the process fails. The promise of mediation lies with negotiating parties owning the outcome of the process. Thus, the inclusion or exclusion of international norms in mediation rests wholly under their charge.

The Growing Prominence of Peace Mediation

Mediation, in which negotiations between two or more conflicting parties are assisted by a third party, is fast becoming a prominent mechanism for the pacific settlement of disputes. It is legally enshrined in Chapter VI of the United Nations (UN) Charter in Article 33. This Article calls upon parties to any dispute to seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means, should the continuance of a given dispute endanger the maintenance of international peace and security. The UN has further conferred prominence on mediation as a conflict resolution mechanism with the UN's Report of the Secretary General Report on enhancing mediation and its support activities. The report encourages building mediation capacity and emphasizes the need for coherent partnerships between mediation actors and the institutions that mandate them, notably the UN, regional and sub-regional organizations, states and non-governmental organizations.

In parallel, the mediation field has moved towards greater professionalization. This may be due in part to the growth in number and diversity of actors conducting or supporting mediated peace processes. The move towards greater professionalization has also led to the increasingly robust role of international norms such as inclusivity, gender equality, transitional justice or democracy promotion in mediation. The growth of this normative framework in mediation is clearly demonstrated by The UN Guidance for Effective Mediation, issued by the UN Secretary General in 2012. Several institutions and organizations such as the European Union, the Organization for Security and Cooperation in Europe, the African Union, and non-governmental organizations with mediation expertise also provide normative policy briefs and manuals. The increasing relevance of norms in mediation may also be attributed to the nature of the conflicts in which peace mediation is conducted. Violent conflicts can lead to situations where the application of international law is weakened or judicial institutions are perceived as illegitimate or defunct. Thus, strengthening the role of norms may help lay out parameters for establishing compliance or legitimacy among parties to a conflict and the constituencies they represent.

The Growing Normative Framework in Peace Mediation

Why does the increasingly prominent role of norms in mediation matter? Because expectations on what mediators can and should achieve are also increasing. Not only are mediators supposed to bring violent conflicts to an end through negotiated settlements, but they are also more frequently asked to integrate norms into their strategies. There is nothing inherently problematic with incorporating international norms rooted in inalienable rights aimed at

creating conditions for peaceful coexistence. Yet, *how* they are incorporated in practice can pose significant challenges.

A first challenge is localization: international norms must be translated into a specific context. “International” does not mean “universal”, and congruence of normative frameworks in different contexts cannot be assumed. For example, powerful normative frameworks like gender equality and transitional justice enshrined in UN Security Council Resolutions and legal conventions are sometimes questioned by mediators, especially in terms of whether or not they are really accepted by the negotiating parties and have roots in specific communities.

A second challenge is prioritization: mediators may find themselves in situations where they must prioritize one norm over another, even if the norms clash. For instance, what happens when a mediator must choose between the norm of fostering consent of the parties and the norm of transitional justice? The prohibition on mediators to engage with indicted individuals may severely constrain a mediator’s ability to foster the consent of the parties. Take the International Criminal Court’s indictment of Joseph Kony: his indictment directly affected the opportunity to have him at peace talks. From a rights perspective, the indictment may barely be questioned. However, from a mediation perspective, this may be seen as a lost opportunity to get a relevant stakeholder to the table.

A third challenge is implementation: often, there are unrealistic expectations placed on mediators to include norms that may not be easily implemented. Peace agreements that include many normative clauses with the goal of redefining societies in the future run the risk of

overpromising, especially in contexts where capacity or political will may not be enough. Northern Ireland's Good Friday Agreement, Nepal's Comprehensive Peace Agreement, Sudan's Comprehensive Peace Agreement are just some examples of agreements that were signed years ago where implementation is still incomplete. International norms should be upheld and respected where and when appropriate, and not oversold or overpromised.

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